



POLICE DEPARTMENT

November 4, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Chris Acker  
Tax Disciplinary No. 889474  
44 Precinct  
Disciplinary Case No. 2010-2429

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The above-named member of the Department appeared before me on August 4, 2011, charged with the following:

1. Police Officer Chris Acker, while assigned to the 44th Precinct, while on-duty, at approximately 1000 hours, on or about May 11, 2009, in the vicinity of 880 Morris Avenue in the Bronx, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that Police Officer Acker threatened to arrest Ms. Alice Mack without a sufficient legal basis.

P.G. 203-10, Page 1, Paragraph 5 ABUSE OF AUTHORITY

2. Police Officer Chris Acker, while assigned to the 44th Precinct, while on-duty, at approximately 1000 hours, on or about May 11, 2009, in the vicinity of 880 Morris Avenue in the Bronx, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that Police Officer Acker issued a summons to Mr. Person A without a sufficient legal basis.

P.G. 203-10, Page 1, Paragraph 5 – ABUSE OF AUTHORITY

3. Police Officer Chris Acker, while assigned to the 44th Precinct, while on duty, at approximately 1000 hours, on or about May 11, 2009, in the vicinity of 880 Morris Avenue in the Bronx, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that Police Officer Acker issued a summons to Ms. Ana Matos without a sufficient legal basis.

P.G. 203-10, Page 1, Paragraph 5 – ABUSE OF AUTHORITY

4. Police Officer Chris Acker, while assigned to the 44th Precinct, while on-duty, at approximately 1000 hours, on or about May 11, 2009, in the vicinity of 880 Morris Avenue in the Bronx, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that Police Officer Acker arrested Ms. Ana Matos without a sufficient legal basis.

P.G. 203-10, Page 1, Paragraph 5 – ABUSE OF AUTHORITY

5. Police Officer Chris Acker, while assigned to the 44th Precinct, while on-duty, at approximately 1000 hours, on or about May 11, 2009, in the vicinity of 880 Morris Avenue in the Bronx, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that Police Officer Acker arrested Mr. Person A Person without a sufficient legal basis.

P.G. 203-10, Page 1, Paragraph 5 ABUSE OF AUTHORITY

6. Police Officer Chris Acker, while assigned to the 44th Precinct, while on-duty, at approximately 1000 hours, on or about May 11, 2009, in the vicinity of 880 Morris Avenue in the Bronx, Police Officer Acker failed to do his duty as a New York City Police Officer in that he failed to maintain his activity log, to wit: after taking police action with regard to Mr. Person A and Ms. Ana Matos, Police Officer Acker failed to document said action in his activity log.

P.G. 212-08 ACTIVITY LOGS

7. Police Officer Chris Acker, while assigned to the 44th Precinct, while on-duty, at approximately 1000 hours, on or about May 11, 2009, in the vicinity of 880 Morris Avenue in the Bronx, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that Police Officer Acker was discourteous to Mr. Person A Person A by stating in sum and substance: “Are you supposed to be out here right now? Get the fuck back inside.”

P.G. 203-10 PROHIBITED CONDUCT – DISCOURTEOUS REMARKS

8. Police Officer Chris Acker, while assigned to the 44th Precinct, while on-duty, at approximately 1000 hours, on or about May 11, 2009, in the vicinity of 880 Morris Avenue in the Bronx, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that Police Officer Acker was discourteous to Ms. Alice Mack in that Police Officer Acker stated in sum and substance: “Shut up, before I arrest you.”

P.G. 203-10 – PROHIBITED CONDUCT DISCOURTEOUS REMARKS

The Department was represented by Adam Sheldon, Esq. and Jessica Brenes, Esq., Department Advocate's Office. Respondent was represented by John Tynan, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

Respondent is found Guilty of Specification Nos. 2, 3, 4, 5, and 6. He is found Not Guilty of Specification Nos. 1, 7, and 8.

### SUMMARY OF EVIDENCE PRESENTED

#### The Department's Case

The Department called Ana Matos and Alice Mack as witnesses. It also offered for evidence the recorded out-of-court statements of Person A and Person B

#### Ana Matos

Matos is the Associate Executive Director of Concourse Medical Center ("the Center"), located at 880 Morris Avenue in the Bronx. She has held this title for three-and-a-half years. She has been certified in New York and internationally as an alcohol and substance abuse counselor for the past "34, 35 years." She has never been convicted of a crime, has never been arrested except for the incident in this case, has never been part of any claim against the Department, and did not file a civilian lawsuit regarding this incident.

The Center is a methadone clinic licensed in New York. It is an outpatient facility that is licensed for 600 patients. The staff treats “anywhere from 350 to 484 patients” on a daily basis, with a typical visit lasting approximately 50 minutes. It is located across the street from a larger methadone clinic that serves more clients. Besides treating patients for substance abuse, the staff’s primary responsibility is to protect patient confidentiality according to federal regulations. The clinic must protect the fact that the patients are in the program, their health records, and they must provide a safe environment. The staff achieves this by monitoring patients’ movements as soon as they enter the clinic. Patients, who carry identification, get checked in and then receive medication. When a non-patient enters the Center, the staff “immediately” asks for identification so that “no one unauthorized” remains on the premises.

Matos frequently interacts with police officers at the clinic. For instance, when patients get arrested, officers bring them to the clinic to be medicated. Matos also has contact with them when they come to the clinic seeking a suspect. Both the Code of Federal Regulations (CFR) and the Health Insurance Portability and Accountability Act (HIPAA), however, prevent her from leading officers to suspects.

Matos identified photographs of the Center. [Department’s Exhibit (DX) 7A is a photograph taken directly outside of the Center on Morris Ave and 161 Street. DX 7B is the entrance on Morris Avenue. DX 7C is a light blue doorway that leads to the security station where two counselors and a security officer are usually stationed. DX 7D is the view when walking through the entrance door. The receptionist’s cubicle and nurse’s office are visible in the photograph. DX 8A is the corridor located on the left side of the clinic upon entrance. On the right side of the photograph are two doctor’s offices, and on

the left side are two patient bathrooms with a lab in between them. DX 8B includes the medication station on the left side of the photograph, and on the right side is the blue door that she emerged from during the incident in this case. DX 8C depicts the medication windows that are located to the right of the blue door.]

On May 11, 2009, at approximately 10:00 a.m., Matos was at work when she received a call from staff member Person B [REDACTED] He informed her “that there were police officers on site and they were opening doors” (see doors in DX 8A). Matos came out of the exit door to try to come to the front of the facility. She described the area that she came from, behind the exit door, as a “secure location.” The clinic keeps over 10,000 milligrams of methadone in a safe in that back area. Only “authorized personnel” are allowed to be there. To gain access, one must either have a key or be buzzed in. Patients are not allowed there “unless they are going to a counselor’s office, and they must be escorted.” It is closed to the public, including police officers.

The first officer Matos encountered that day was Respondent, whom she saw outside of the exit door (see DX 8B). She added that the doors “tend to stay open a little bit,” so “as is practice...[we] tend to shut it right behind us.” She introduced herself to Respondent and asked, “How can I help you?” He told her that he had “to get back there.” She explained to him that she could not allow that because it was a “secure area.” She asked again if she could help Respondent and implored him to “please explain to me what’s going on.” Although she could not remember his exact words, it was similar to “[o]pen the door. I demand that you open the door right now.” Respondent never explained why he was at the clinic or any of the specifics of his investigation. Matos described his demeanor as “belligerent,” “not respectful,” “demanding,” and

“confrontational.” After the second or third time that Matos refused to let him into the secure area, Respondent pushed her right shoulder to move her away from the door and tried to get past her. When she denied him entry, he arrested her. She asked Respondent why she was being arrested, and he responded, “Just shut up.” The entire incident at the doorway lasted “no more than three to five minutes.”

Matos explained that she kept asking for an explanation because the staff was “not used to this behavior,” especially not from members of the Department. Officers typically remain in the front until she comes to speak with them. Here, Respondent “bumrush[ed]” his way through the building, went past the front desk, and demanded entry into a restricted area. Matos testified that she did not make any physical gestures toward Respondent and did not put her hands on him.

Matos stated that security guard Person A and nurses behind the medicating windows were present during the incident with Respondent. She never saw [REDACTED] who was about three feet away, physically or verbally interfere with the officers. He also never made any physical gestures at the officers and never placed his hands on either Respondent or Matos.

Matos was walked down the hallway (see DX 8A) and escorted out of the building. She never resisted arrest or yelled at the officers, although she may have said, “You’ve got to be kidding.” As she was led outside, she instructed Person A to record Respondent’s name and shield number. When Person A attempted to do this, another officer instructed Respondent to arrest him. This took place next to the police car that she was being placed into, close to the corner and bus stop located on Morris Ave. (see DX 7A).

During the ride to the station house, Matos again asked Respondent why they were arrested. Respondent told her to “shut up” and also said, “Don’t worry about it. If you qualify, you will get a summons and be let go.” At the station house, Matos and Person A were brought to the “holding” area. There, she started joking and laughing with Person A in order to calm him down. Respondent returned and said, “You need to shut up. This is no laughing matter and it’s only going to get worse for you if you keep laughing.” Matos replied, “It is not going to get worse for me, it will for you.” Matos said this because she was trying to calm down her employee and did not believe that Respondent needed to come in and speak to them. Shortly after this, Respondent handed her a summons for Disorderly Conduct and escorted her out of the station house. Person A received a summons as well. [DX 5 and 6 are copies of the criminal court summonses issued to Matos and Person A dated May 11, 2009. Both summonses resulted in dismissals.]

On cross examination, Matos explained that under federal confidentiality laws, the confidentiality of her patients takes precedence over an attempted murder investigation. As a result, if an officer asked to go into the secure area, the staff would tell him, “If you wait a minute, management will be right out.” Similarly, the officer would not be permitted to look at the sign-in book. These procedures are in accordance with “42 CFR, part two, specific to drug and alcohol treatment,” which applies to all individuals certified in New York as substance abuse counselors or who operate a substance abuse treatment program. She added that “patient records and their treatment progress [are] protected under federal confidentiality laws.” The staff cannot even “confirm or deny a patient’s existence in our program.” She admitted that she would not

prevent officers from looking for a suspected killer in the clinic if "they were chasing" him. Here, Respondent did not ask her whether there was a person at the Center.

Hypothetically, if a patient stabbed someone outside of the Center and then came inside for a reason that did not include treatment, Matos would be unable to confirm or deny that the patient is there. But since the Center is an outpatient facility, the patient would have to leave eventually and so could not hide there indefinitely. She added that she has seen officers "sit and wait" for suspects to leave when they know they are there.

Matos stated that the Center is a private, not public facility. She acknowledged, however, that when entering, there are no markings indicating that it is a private facility or that entry is prohibited (referring to DX 7B and 7C). There are also no markings by the bathroom, although a clinic laboratory is designated as "private." Matos explained that officers are allowed to enter the Center, but need permission to enter other areas. A security officer at the front desk tells people whether they can proceed.

Matos also admitted that even though the staff cannot provide information to officers about patients, it is possible that they will do so through anonymous telephone calls. She understands that every citizen has the right to make anonymous calls to the police, even if it is based on privileged and confidential information. Even though the clinic always follows regulations, she cannot restrict a staff member from making an anonymous phone call to the police, specifically if it occurs after work hours.

Concerning the incident at the Center, Matos reiterated that Respondent walked by the staff at the entrance and then into the medicating room. He opened doors to the medical offices which were closed, but not locked (see DX 8A). Respondent did not look through the secure areas behind the locked door where the methadone is kept. She never

spoke with the lieutenant or sergeant who accompanied Respondent during the incident.

Person A never grabbed Respondent as they were speaking.

After being released from the station house, Matos spoke to approximately six of her staff members about the incident. They told her that Respondent did not attempt to find out the name of the individual he was looking for or even state that he was looking for someone. She was unaware until her investigation afterwards that her intern,

Person C, knew that the officers were looking for someone at the clinic. Person C may have told her "something to the effect [that] a crime has been committed somewhere," but Matos could not answer whether Person C knew this as the incident was taking place.

Matos could not recall whether another intern, [REDACTED], knew at the time that Respondent was looking for a man, [REDACTED] who had allegedly committed a crime and signed in at the Center 20 minutes earlier. Matos acknowledged that when she returned to work, Person B told her that the officers were looking for someone at the clinic, but he did not know the crime. The reason why Matos still had to ask Respondent why he was there was because she came out of the secure location. She reaffirmed that Respondent never gave her or Person A a reason, not even with a lieutenant and sergeant present. She explained that she found out from an officer at the station house that the officers were there because a crime was committed in the area and they were told the suspect was at the Center.

On redirect examination, Matos stated that if Respondent told her that he was looking for someone who may have committed a crime, she probably would have told him to wait until she removed her patients from the area, and then she "would have

walked him through” the area. It is her job to protect the patient’s privacy, but she also had to consider that an officer’s life could have been in jeopardy.

Matos stated that even though Person B informed her after her arrest that the officers were looking for a suspect who was a patient at the Center, no staff member or police officer told her that a person may have been hiding in the building when she came out of the door. The staff later found out that the suspect was not at the Center and was not a patient there.

Alice Mack

Mack is a licensed nurse practitioner who has been a nurse for 45 years and has worked at the Center for 25 years. She has never been convicted of a crime, never been arrested, and other than the incident that is the subject of this case, has never filed a complaint against the Department. She never filed a civil lawsuit against any individuals in the City regarding this incident.

As part of her job, Mack distributes methadone to the patients through a hole in a bullet proof medication window. She recalled that on May 11, 2009, at approximately 10:00 a.m., she was at the medication window when she observed police officers run towards her window and then to a back door (see DX 8C for the window and DX 8B for the door). That door, which is always locked and not open to the public, leads to a secure area for counseling sessions, administrative offices, and is where patients’ charts are kept. Personnel need a key to open the door, and patients cannot open it. Mack testified that “it looked like [the officers] were looking for someone,” but she did not see anyone come in or anything out of the ordinary before their arrival.

Mack told Respondent that he could not go through and asked him what he was doing and where he was going. He responded by telling her “to shut up or I will lock you up” and then continued toward the door. Mack was unsure whether Respondent actually tried to open the door. She believed that Respondent told her that they were in pursuit of “personnel,” but he did not mention a violent crime to her or provide a name or description of the suspect.

She then saw Matos come out of the door and speak to Respondent. She was unable to hear what they were saying because of the thickness of the glass. She saw Respondent try to go through the door, and then saw Matos close the door behind her to prevent him from doing so. Matos was neither loud nor combative as she tried to find out what Respondent wanted and why he was there. Mack stated that Respondent was “talking loud” and “rough talking.” She also noted that he was not calm. She contrasted this behavior to that of most officers who enter and explain what they want. Specifically, they do not try to push their way through a door.

The entire discussion took “a couple of minutes, maybe five minutes, maybe less.” She never observed Matos place her hands on Respondent or make any physical, aggressive moves toward him. She saw Respondent turn Matos around, take each arm, twist it, and then handcuff it. After being placed in handcuffs, Matos was walked outside. Although Mack could not see the entire walk out of the clinic, she never saw Matos resist the officers.

Person A the security guard, was also present for the incident. Again, Mack could only see the discussion between Person A and Respondent. She never saw Person A make any physical gestures towards Respondent, grab him, or interfere in any way. Another

officer was also present, but he “was just standing there.” Two patients were also sitting in the area where she worked, but there were no other patients around because they are kept away when police officers come inside.

Over the course of Mack’s 25 years working at the clinic, she has had contact with police officers, but has never had a troubling experience until this incident. She noted that if there is an emergency, officers come in and always stop at the front desk. They hardly go to the back of the clinic unless they are bringing a patient back there.

On cross-examination, Mack reiterated that she heard through the bulletproof glass window that Respondent was looking for “personnel, not a person.” She did not tell Matos that Respondent was looking for personnel. She clarified that Respondent did not actually run up to the glass window, but just into the medication area. She did not notice him open the doors in the hallway leading up to the medication area.

#### Out-of-Court Statements of Person A

DX 1 and 1A are the compact disc recording and transcript of the Civilian Complaint Review Board (CCRB) interview of Person A dated August 11, 2009. In the interview, Person A stated that he was standing inside the Center by the door when four officers “barged in” without discussion and attempted to open doors. The officers were aggressive and rude, and Person A informed them that it was a private facility and that he could not let them in. A Caucasian officer, approximately 6’1” tall, with brownish hair and a “snotty attitude” told Person A to “open the fucking door.” The officers told Person A that a stabbing had taken place and that they were looking for someone wearing blue. Person A informed the officers that nobody wearing blue was present and there were no

patients in the back. In addition to the Caucasian officer, Person A recalled one of the other officers being black. He could not recall the races of the remaining two officers because he was not focused on them.

After this, Matos appeared at the scene. When she would not permit the officers to enter the back of the Center, the Caucasian officer forcefully grabbed her by the arm and arrested her. Person A followed her and the officers outside. When he asked the officer for his name and shield number, the officer replied, "Go back in the fucking clinic. . . . Are you supposed to be out here?" The officer proceeded to turn his shoulder away so that Person A could not see his shield. After Person A asked again for the officer's name and shield number, the officer instructed another officer to arrest him.

#### Out-of-Court Statements of Person B

DX 2 and 2A are the compact disc recording and transcript of the CCRB interview of Cabrera, dated August 11, 2009. In the interview, Person B stated that six officers entered the Center together. One officer asked an intern who was sitting at the security area, whether a certain individual was there. Person B who was also sitting there, explained to the officers that HIPAA law prevented them from disclosing this information. A Caucasian officer, approximately 6'0" tall, became "irate" that they would not reveal the information. Person B remembered there being only one Caucasian officer at the scene, but it is possible that there was another one. The Caucasian officer told Person B in a raised voice that he was conducting an investigation and that the police were "going to do whatever it took to get the information that they needed." Person B offered Respondent the opportunity to speak to Matos, but at that point Respondent

“wasn’t listening” to him and said that he was going “to do this on [his] own.”

Respondent proceeded to open doors in the hallway, disregarding Person B instructions not to do so. Person B called Matos and told her that officers were in the building, they were asking for patient information, and that one of them was opening doors. When Matos appeared, she informed the officer that he could not enter the back of the Center. Matos and the officer got into a conversation, and Person B heard the officer tell Matos that she was obstructing an investigation. The next thing Person B knew, the officer grabbed Matos’ arms and placed her in handcuffs. Person B described the officer as aggressive and forceful. When a security guard (Person A) asked where Matos was being taken, he too was arrested.

#### Respondent’s Case

Respondent testified in his own behalf.

#### Respondent

Respondent, a 25-year member of the Department, is currently assigned to the 44 Precinct. On May 11, 2009, while assigned as the sergeant’s operator, he responded to a domestic assault complaint at Person C. When he arrived, he found the female victim in grave condition with multiple stab wounds to the back. The victim told him that the alleged perpetrator “left to go to the methadone treatment program” at 880 Morris Avenue, which is the Center’s address. Respondent testified that he was familiar with the Center, had been inside “many times” before, and knew that the cross street was East 161 Street, diagonally across the street from another methadone clinic. He added that “some

people have a tendency to say "161 and Morris," which applies to both the Center and the second clinic, but the victim of the stabbing provided the specific address of the Center.

It took Respondent approximately two minutes to get from the scene of the stabbing to the Center. He testified that he spoke to the person at the reception desk and "told them why we are here, that there had just been a stabbing approximately three blocks away, and if they saw this person come in." The person at the desk gave a negative response. Respondent then requested to see the log book but was denied. He and five other officers then walked down the corridor (see DX 8A) and ended up in the medication area, "but everything was locked." Respondent stated that he did not speak to any of the people sitting behind the medication window. He also did not see anyone who fit the suspect's description. At that point, the investigation had reached "a little bit of a stalemate."

Respondent stated that as they were standing in the medication area, "a lady came out" from behind the locked door. He did not know who was she at the time, but later identified her as Matos, the Associate Director of the Center. Respondent testified that by this time, he had already disclosed why he and the other officers were in the building. When Matos came out, Respondent "told her why we were there, that we were looking for a person." He also gave her the suspect's name and description and asked her if he was there. Matos responded, "You can't come in here." Respondent continued to tell Matos that they were investigating a stabbing and that he had "credible evidence" that the suspect came to the Center for treatment. Respondent testified that "At that point, she continue[d] through the door, the door closed behind her, and she put her hands up. It was at that point that I said, 'You are under arrest.'" He arrested her for Obstructing

Governmental Administration, and explained to her that she was interfering with his efforts to find a felon whom he had good reason to believe was at the clinic. "Almost immediately" after this, Person A grabbed his shoulder. Respondent "grabbed him, pushed him away" and arrested him for Obstructing Governmental Administration. During this time, the other members of the service "were right there" with Respondent. Respondent was unable to continue his investigation because Matos and Person A "were not forthcoming" with information.

At the station house, a female officer searched Matos and handcuffed her to a rail bolted to the wall. Respondent explained, "It was at that time [that] I decided to issue them, both of them, summonses in lieu of arrests, citing both of them for [D]isorderly [C]onduct." His sergeant approved this decision.

On cross examination, Respondent stated that he responded to a domestic violence call, which was a stabbing. He asked the victim where the suspect was, and even though she was in grave condition, she gave him the Center's address. The officers assumed for their safety that the suspect had a weapon, but they had no knowledge about it. Respondent admitted that he "probably [did] not" mark anything down about the domestic violence incident in his Activity Log. He did not believe that it was his duty to record anything because the investigation was not his job – driving his supervisor was. [DX 3 is a copy of Respondent's Activity Log, dated May 11, 2009].

Respondent was aware that the Center and another methadone clinic were diagonally across the street from each other. He acknowledged that since he drove to the scene with only his sergeant, it is possible that the rest of the officers went to the other methadone clinic. He conceded that since the domestic violence call occurred at

approximately 9:30 a.m. and the officers arrived at the Center at approximately 10:00 a.m., it is possible that the suspect already arrived, took his methadone, and left. He further conceded it was possible that the suspect did not keep his appointment.

When the officers arrived at the Center, they had a name and description of the suspect. Respondent indicated that they did not conduct surveillance before entering the facility because they already knew that it was a methadone clinic. There was no commotion in front of the building that suggested that someone had come into the facility and endangered it. Nobody called the Center to find out if there was anything out of the ordinary occurring inside.

Respondent testified that once inside the Center he asked the staff about a specific name, but they cited HIPAA law as the reason that they could not reveal this confidential information. He agreed that it was not "unreasonable" for them to tell him to speak to a supervisor, and that they were not obstructing governmental administration because they were just doing their jobs. He admitted that even though the staff told him that they could not provide any information, he went "as far as [he] could go" into the clinic until he reached locked doors (see DX 7C, 7D, and 8A for the areas that Respondent went through). He stated, "If [doors] opened, I opened them." He testified that no one was receiving medical care inside any of the doors that he opened. One door was a utility closet and another was a restroom. By the time he got to the medicating area, he had not seen anyone matching the description of the suspect or any sort of commotion. He denied that he spoke to Mack behind the medication window and stated that she is "dead wrong" that he threatened to arrest her.

He then saw Matos come through the blue door. Respondent reiterated that he identified himself to her, explained why the officers were conducting an investigation, and asked to go into the back. She never identified herself to him and without providing a reason, told him that he could not go into the back. At this time, the blue door slowly closed on its own. It was a heavy, slow moving steel door with a hydraulic closer that he knew from experience was kept locked because methadone is stored in that area. Respondent denied that he tried to get past Matos as the door was closing.. After being in front of the door for approximately ten seconds, with it closing behind her, Matos “put her hands” on Respondent’s shoulder. After he placed the handcuffs on her, “she was always compliant” and “never offered any resistance.” Matos’s dialogue during the incident was only with Respondent, not with any of the other officers. Respondent testified that after this, he arrested Person A by the same door after Person A grabbed him “from behind.” There was initially no conversation or argument, although Person A “struggled a little bit” when handcuffed. Neither Matos nor Person A grabbed hold of any of the other officers during the incident. Respondent agreed that during his September 2009 CCRB interview he said that Person A tried to grab Matos “as we were leaving the facility to go outside” to the police car.

Even though the suspect was not in the lobby, closet, bathroom, or medication area, Respondent believed that he could have been in the area behind the door because patients go to the back when further treatment is required. He admitted that he had no specific knowledge that the suspect was back there and it was possible that he was not. Ultimately, he and the five officers left the clinic because they were not allowed to search the secured areas and did not have a warrant.

Respondent testified that he told Matos and Person A that they were being arrested for Obstructing Governmental Administration. The reason was because they grabbed him and did not allow him to search for a perpetrator of a crime. At the station house, he “decided to issue them a summons” and charged both of them with Disorderly Conduct, which is not a lesser included offense of Obstructing Governmental Administration. Respondent made this decision because they did not find the suspect, he was neither injured nor insulted, and because Matos was the Associate Director and Person A was a security guard. A summons would prevent each from having a record. Respondent testified that an officer is allowed to arrest a person for one offense, but then later charge a different offense. Respondent agreed that he simply changed the allegations that he was going to use for the obstructing charges and transferred them to the Disorderly Conduct charges.

Respondent admitted that he included neither the subsection of Disorderly Conduct nor a description of the event on the summonses, even though he was required to provide the subsection (see DX 5 and 6). Although he had notes on the case since a detailed description is required when issuing a criminal court summons, he admitted that he did not provide them to CCRB because they did not ask for them. He did not think that anything in his notes would differ from his testimony. He believed that the Disorderly Conduct occurred when they touched him and stepped in front of him in the doorway to prevent him from looking behind it, even though the door was locked. They should have opened the door for him because he was “licensed and privileged to be there” because he was “conducting an investigation regarding a felony.”

Respondent explained that a desk officer makes command log entries based on information that an officer provides immediately after arriving at the station house. He could not recall, but "probably" immediately told the desk officer that Matos and Person A were arrested for Disorderly Conduct. [DX 4 is a copy of the command log entries, dated May 11, 2009.] Respondent recorded two summonses and their corresponding numbers in his Activity Log, but did not record the offense (see DX 3). He admitted he did not record the pedigree information first when he issued the summonses. Finally, he agreed that he did not record the description of the incident at the Center, which the Patrol Guide mandates when issuing a summons. He ultimately admitted that as part of the incident at the Center, he made two arrests but did not record anything, and then issued two summonses, but did not record the full information about them.

On redirect examination, Respondent reiterated that he spoke to his sergeant about changing the arrests for Obstructing Governmental Administration to summonses for Disorderly Conduct, and his decision was approved. He believes that approval is required when making that type of change.

#### FINDINGS AND ANALYSIS

While there are sharp differences about the specifics of what occurred during the incident underlying these charges, the overall facts are not in dispute. Respondent responded to a domestic assault complaint. The female victim had been stabbed multiple times in the back and Respondent believed she was in grave condition. She informed police that her assailant had gone to his appointment at a methadone clinic. Respondent immediately went to the Concourse Medical Center, a methadone clinic where he

believed the perpetrator could be found.<sup>1</sup> It is at this point that the accounts of what occurred vary. Testimony from Matos and Mack as well as statements from other employees of the clinic, generally describe Respondent as behaving something like a bull in a china shop when he entered the methadone clinic. He failed to clearly explain why he was there and opened doors to private areas of the clinic. Respondent describes his behavior as polite and professional. He said he explained what his purpose was and that Matos refused to cooperate with him while [REDACTED] made moves that interfered with his arrest of Matos.

What is undisputed is that Respondent arrested Matos and [REDACTED]. He initially charged them with Obstructing Governmental Administration, a misdemeanor. At the precinct he issued them summonses for Disorderly Conduct and they were released. The cases were ultimately dismissed.

There is no question that Respondent was, at the time of this incident, attempting to apprehend someone who had just stabbed a woman in the back causing what, he believed, were life threatening injuries. He undoubtedly believed that he was carrying out his professional responsibilities when he went to the methadone clinic looking for the perpetrator.

Matos and Mack are also professionals providing service to the community at a methadone clinic. They too believed that they were carrying out their professional responsibilities during this incident. There was no personal gain to anyone and it is clear that whatever occurred resulted at least in some measure from conflicting perspectives on whose professional obligations should prevail under the circumstances.

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<sup>1</sup> Concourse Medical Center was one of two methadone clinics in the area that the perpetrator could have gone to. There is nothing in the record to indicate that the perpetrator was or had been at Concourse Medical Center.

Trying to sort out exactly what happened in the clinic is a difficult task, but as will be seen, is not necessary for the purposes of determining the specific allegations in this case.

Specification Nos. 4 & 5 allege abuse of authority arising from the improper arrests of Matos (Specification No. 4) and Person A (Specification No. 5).

Respondent's version of events is a little garbled but even if one were to accept it at face value, charging Matos with Obstructing Governmental Administration was improper.

Respondent claims that he had had a discussion with clinic personnel about getting access to private areas of the facility and the log book. He had been told that Federal HIPAA regulations prevented them from cooperating. He described the situation as "a little bit of a stalemate." Matos, he said, came out of the back, he did not know who she was or that she was the Associate Director of that facility. Obviously, he recognized that she was a person of authority because, he said, he explained to her why he was there. Describing the arrest, Respondent testified, "At that point, she continues through the door, the door closes behind her, and she put her hands up. It was at that point that I said 'You are under arrest.'"<sup>2</sup>

The crime of Obstructing Governmental Administration requires an *intent* to do so. Respondent admits he was amply aware that the reason Matos and staff members who worked for her were not cooperating with him because it was their belief that they were prevented from doing so by Federal law. There was, he should have known, no intention to obstruct his investigation.

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<sup>2</sup> At a later point in his testimony, he claimed she put her hands on him.

This Court has repeatedly held that an officer in the field need not be completely correct when taking action there. What is required is a reasonable good faith basis to believe the action the officer is taking is correct. Respondent did not have a reasonable good faith basis to believe that Matos was intentionally obstructing his search for the perpetrator.

For one thing, Respondent knew he was not dealing with a friend or relative of the perpetrator. Such a person might be expected to attempt to hinder his efforts to apprehend a perpetrator. Respondent had gone to a facility where there was no reasonable expectation that staff would try to protect a violent felon. Respondent acknowledges that he was aware that the staff members were citing their need to comply with Federal law. While he might not have known exactly who Matos was, he certainly knew that she had emerged from the back private area of the clinic and was a person of authority. Had he truly had any doubt, he could have asked. He certainly should have recognized that there might have been merit to her position and, more importantly, that their purpose was not to hinder him but to comply with the law as they understood it.

There is also a matter of judgment involved in assessing the reasonableness of Respondent's action in making these arrests. Respondent acknowledged that things had come to a standstill, which should have given him time to think about his actions. More importantly, he was there, according to his own testimony, with a number of other officers, one of whom was a sergeant (he was the sergeant's driver) and another of whom was lieutenant. The standstill could have given him an opportunity to consult with superior officers before arresting the head of the clinic. Thus, even if one were to accept

everything Respondent said about the situation, the arrest of Matos was sufficiently flawed as to rise to the level of misconduct.

As will be seen, there is reason to doubt the reliability and accuracy of Respondent's recounting of events at the clinic. If one were to accept Matos' version of what occurred, then Respondent never explained to her his purpose for being there or what exactly he wanted her to do. In that case, Matos could not have been guilty of Obstructing Governmental Administration because of her lack of knowledge about his "governmental" purpose.

There is some reason to believe Matos on this issue. She testified that had she known the full situation, she might have made some effort to assist. Moreover, it is difficult to accept that Matos and others in the clinic would not have made every effort to assist, consistent with their understanding of the law, if they understood that he was trying to apprehend someone who had just committed a violent crime and who, as such, represented a danger to themselves and their colleagues. Under either version of the facts Respondent had no basis to arrest Matos.

In his testimony at this trial, Respondent made it seem that the basis for arresting Person A was that he interfered with arrest of Matos. He described Person A as putting his hand on his shoulder just after announcing that arrest. But his testimony failed to provide any evidence that Person A actually did anything to prevent the arrest of Matos. According to Respondent, Person A simply put his hand on Respondent's shoulder.

Person A was not arrested for Resisting Arrest<sup>3</sup> but Obstructing Governmental Administration. At another point in his testimony at this trial, Respondent stated that both Matos and Person A were arrested because they grabbed him and did not allow him to search for the perpetrator of a crime. The problem with this is that Respondent provided no testimony to indicate that Person A did that at any point.

An additional problem with Respondent's testimony about the arrest of Person A involves something as basic as where it occurred. According to his trial testimony Person A was arrested inside the clinic, near the blue door, at the moment he announced that Matos was under arrest.

On cross-examination, it was revealed that Respondent had made an earlier statement at CCRB that Person A was arrested as they were leaving the clinic when he put his hand on Matos. These are inconsistent accounts and raise significant questions of credibility about what Person A actually did and even where he did it.

Equally significant is the fact that his arrest of Person A flowed from the poor judgment made in arresting Matos.

The Respondent is found Guilty of Specification Nos. 4 & 5.

Specification Nos. 2 & 3 charge Respondent with issuing a summons without legal basis. Specification No. 2 relates to the summons issued to Person A while Specification 3 relates to the summons issued to Matos.

In his written closing argument, the Assistant Department Advocate explained that these specifications relate to a decision Respondent made at the station house not to

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<sup>3</sup> Penal Law Section 205.30 states that the crime of resisting arrest occurs when a person "intentionally prevents or attempts to prevent a police officer or peace officer from effecting an authorized arrest of himself or another person."

proceed with the criminal case against Matos and Person A but to issue them Disorderly Conduct summonses instead.

This case presents a unique issue. Ordinarily, when we are asked to review the propriety of issuing a summons it is because the summons reflects the police action taken. In this case the police action had been taken earlier in the day when Matos and Person A were arrested and charged with the misdemeanor of Obstructing Governmental Administration. The summons reflected a downgrading of that original charge.

Respondent testified that after they were taken to the stationhouse Matos was searched by a female officer and handcuffed to a rail bolted to the wall. He stated, "It was at that time [that] I decided to issue them, both of them, summonses in lieu of arrests, citing both of them for [D]isorderly [C]onduct."

This downgrading actually worked to the benefit of Matos and Person A as it removed the need for them to be fingerprinted (or, if fingerprinted, for the fingerprints to be filed), it eliminated the possibility of their being held longer for an appearance in Criminal Court and it eliminated the misdemeanor, that is the criminal charge, leaving only a violation.

In his written presentation, the Assistant Department Advocate noted that if Respondent were reconsidering his actions, he should have dismissed the charges altogether rather than issuing a summons. That would have been a better course, but the issuance of the summons was certainly a half step in that direction.

On the other hand, the use of the Disorderly Conduct charge as a catch-all, default charge is inappropriate. Neither the conduct of Matos or Person A established any of the subdivisions of Disorderly Conduct. Perhaps for that reason, the summonses prepared by

Respondent lacked any subdivision or factual allegation and were dismissed. Because these summonses were improperly issued, Respondent is found Guilty of Specification Nos. 2 & 3.<sup>4</sup>

Specification No. 1 charges that Respondent “threatened to arrest Ms. Alice Mack without a sufficient legal basis.” Specification No. 8 alleges that Respondent “was discourteous to Ms. Alice Mack in that [he] stated in sum and substance: “Shut up, before I arrest you.” These two specifications, therefore, arise from the same alleged conduct.

Mack testified that as Respondent entered the clinic, they ran towards the back door. She asked them where they were going and “they told me to shut up or I’m going to lock you up.” They did not tell her why they were in the clinic.

There is no corroboration of this. That is, none of the other witnesses claim to have heard it. As such, it is a one-on-one situation.

Mack’s actual testimony is that “they” spoke to her, referring to Respondent and another officer who was allegedly with him. At no point did Mack specifically identify Respondent as the person who made the statement. Respondent denied ever having a conversation with Mack. This leaves open the possibility that the other officer Mack referred to is the one who made the statement.<sup>5</sup>

The Department has the burden of proof. The Department must also prove not only that the statement was made but that Respondent and not someone else made the

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<sup>4</sup> This is to be distinguished from what often occurs in the Criminal Court where, on consent of both prosecution and defense, a plea can be taken to Disorderly Conduct even if the facts do not establish that offense.

<sup>5</sup> At another point in her testimony Mack indicated that person who made the statement was the “Caucasian.” The only evidence that this might have been Respondent is found in the unsworn, hearsay statement made by Person B. He stated that there was only one Caucasian officer, but he also conceded there might have been more than one.

offending statement. Because the Department has not met its burden, Respondent is found Not Guilty of Specification Nos. 1 & 8.

Specification No. 6 charges Respondent with having “failed to maintain his activity log, to wit: after taking police action with regard to Mr. Person A and Ms. Ana Matos, [he] failed to document said action in his activity log.” During his testimony at this trial, Respondent admitted that he made no notations about the arrest of Matos and Person A nor did he make any notations regarding the issuance of summonses for Disorderly Conduct to them. As such, Respondent is found Guilty of this specification.

Specification No. 7 alleges that Respondent was discourteous to Person A by stating in sum and substance, “Are you supposed to be out here right now? Get the fuck back inside.”

Person A did not testify at this proceeding. An audio recording and transcript of his statement to CCRB investigators was placed in evidence. No other witness to this alleged event was presented nor was there any other corroboration of it.

Hearsay is permitted in this forum but it not necessarily dispositive of the issue. In this case, there was no opportunity to question Person A and insure that he actually heard this statement and to further insure that it was Respondent who made it. As such, the unsworn, unchallenged statement to the CCRB investigator does not constitute sufficient or substantial enough evidence on which to make a finding. Respondent is found Not Guilty of this specification.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 240 (1974). The Respondent was appointed to the Department on July 15, 1986. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has recommended a penalty of 15 vacation days. Respondent's lack of judgment in arresting Matos and his inability to provide a coherent and credible explanation for the arrest of Person A merit that penalty. Consequently, it is recommended that Respondent forfeit 15 vacation days.

Respectfully submitted,



Martin G. Karopkin  
Deputy Commissioner – Trials

**APPROVED**



OCT 6 9 2012  
RAYMOND W. KELLY  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER CHRIS ACKER  
TAX REGISTRY NO. 889474  
DISCIPLINARY CASE NO. 2010-2429

In 2007 and 2008, Respondent received an overall rating of 4.5 “Extremely Competent/Competent” on his annual performance evaluation. He was rated 4.0 “Highly [REDACTED] In [REDACTED]  
[REDACTED] level due to three or more CCRB complaints within a year.

Respondent has been the subject of two prior adjudications. In 2001, he forfeited 30 vacation days for failing to conduct an investigation and take possession of found property during an integrity test. In 2007, he was charged with failing to provide his shield number to a civilian upon request. This charge was ultimately dismissed, and the matter was remanded to the command for the imposition of a Schedule A Command Discipline and the forfeiture of five vacation days.

For your consideration.



Martin G. Karopkin  
Deputy Commissioner Trials